



7020-02

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Rules of General Application

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States International Trade Commission (“Commission”) proposes to amend provisions of its Rules of Practice and Procedure concerning national security information. The proposed amendments seek to ensure that the Commission’s procedures with respect to national security information are consistent with applicable authorities.

DATES: To be assured of consideration, written comments must be received by 5:15 p.m. on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number MISC-043, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Agency Web site: <https://edis.usitc.gov>. Follow the instructions for submitting comments on the Web site.

Mail: For paper submission. U.S. International Trade Commission, 500 E Street SW, Room 112A, Washington, DC 20436.

Hand Delivery/Courier: U.S. International Trade Commission, 500 E Street SW, Room 112A, Washington, DC 20436. Deliveries must be made during the hours of 8:45 a.m. to 5:15 p.m.

Instructions: All submissions received must include the agency name and docket number (MISC-043), along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking. All comments received will be posted without change to <https://edis.usitc.gov>, including any personal information provided. For paper copies, a signed original and 14 copies of each set of comments should be submitted to Lisa R. Barton, Acting Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112A, Washington, DC 20436.

Docket: For access to the docket to read background documents or comments received, go to <https://edis.usitc.gov> and/or the U.S. International Trade Commission, 500 E Street SW, Room 112A, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary, telephone (202) 205-2000, or Clara Kuehn, Attorney-Advisor, Office of the General Counsel, telephone (202) 205-3012, United States International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>.

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these proposed amendments to the Commission's Rules. This preamble provides background information, a section-by-section explanation of the proposed amendments, and a regulatory analysis of the proposed amendments. The Commission encourages members of the public to comment on the proposed amendments as well as on whether the language of the proposed amendments is sufficiently clear for users to understand.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and

duties. This rulemaking seeks to improve provisions of the Commission's existing Rules of Practice and Procedure. The Commission proposes amendments to its rules concerning national security information. The Commission invites the public to comment on all of these proposed rules amendments. In any comments, please consider addressing whether the language of the proposed amendments is sufficiently clear for users to understand. In addition please consider addressing how the proposed rules amendments could be improved, and/or offering specific constructive alternatives where appropriate.

Consistent with its ordinary practice, the Commission is issuing these proposed amendments in accordance with provisions of section 553 of the Administrative Procedure Act ("APA") (5 U.S.C. 553), although such provisions are not mandatory with respect to this rulemaking. The APA procedure entails the following steps: (1) publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

The Commission proposes to revise subpart F of part 201 to ensure that its rules relating to national security information are consistent with Executive Order 13526 of December 29, 2009, "Classified National Security Information" (75 F.R. 707, Jan. 5, 2010), and its implementing directive, 32 CFR part 2001. The current subpart F includes three sections: 201.42 ("Purpose and scope"), 201.43 ("Program"), and 201.44 ("Procedures"). As more fully discussed below, the proposed amendments would make non-substantive revisions to section 201.42; eliminate existing section 201.43 and subsections 201.44(b) through (f); and update existing subsection 201.44(a) and move it into section 201.43.

Pursuant to 5.2(b)(3) of the Executive Order, these proposed rules were submitted to the Director of the Information Security Oversight Office ("ISOO"), and, on XX, that office approved their issuance.

Section-by-Section Analysis

Section 201.42 would be revised to include updated citations to the Executive Order.

Section 201.43 would be revised to replace the existing text with an updated version of section 201.44(a). Sections 5.2(b)(3) and 5.4(d)(2) of the Executive Order require that an agency publish in the Federal Register implementing regulations that affect the public. The provisions of existing section 201.43 (“Program”) do not affect members of the public.

Section 3.5(e) of the Executive Order requires an agency to “develop procedures to process requests for the mandatory review of classified information” in conformance with ISOO's implementing directive. Proposed revised section 201.43 would update and expand the Commission’s procedures to conform to the requirements of the Executive Order and applicable ISOO regulations (32 C.F.R. 2001.33).

Proposed subsection 201.43(a) updates the requirement that a mandatory declassification review (“MDR”) request must describe the material sought with sufficient specificity, and adds a process for responding to non-specific requests. The proposed subsection adds the mailing address for the Secretary to the Commission. Proposed subsection 201.43(b) would expand the material in the current regulation that distinguishes MDR requests from Freedom of Information Act requests. Proposed revised subsections 201.43(c), (d), and (e) establish procedures for referrals of requests, handling requests for foreign government information, and appeals, respectively.

Section 201.44 would be removed because, aside from the text to be moved into section 201.43, the provisions of section 201.44 do not affect the public. The omitted subsections are: 201.44(b) (“Safeguarding”), (c) (“Reproduction”), (d) (“Storage”), (e) (“Employee education”), and (f) (“Agency terminology”).

Regulatory Analysis of Proposed Amendments to the Commission's Rules

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of proposed rulemaking, these

proposed regulations are “agency rules of procedure and practice,” and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b). Moreover, the Commission certifies that the proposed rules amendments will not have a significant economic impact on a substantial number of small entities.

The proposed rules amendments do not contain any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

No actions are necessary under title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (2 U.S.C. 1531-1538) because the proposed rules amendments will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The Commission has determined that the proposed rules amendments do not constitute a “significant regulatory action” under section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993).

The proposed rules amendments do not have federalism implications warranting the preparation of a federalism summary impact statement under Executive Order 13132 (64 FR 43255, August 4, 1999).

The proposed rules amendments are not “major rules” as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). Moreover, they are exempt from the reporting requirements of the Act because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 19 CFR Part 201

Administrative practice and procedure.

For the reasons stated in the preamble, the United States International Trade Commission proposes to amend 19 CFR part 201 as follows:

PART 201--RULES OF GENERAL APPLICATION

1. Revise the authority citation for subpart F of part 201 to read as follows:

Authority: 19 U.S.C. 1335; E.O. 13256, 75 FR 707.

2. Revise subpart F to read as follows:

Subpart F-- National Security Information

§ 201.42 Purpose and scope.

The following regulation supplements Executive Order 13526 of December 29, 2009, 75 FR 707, and its implementing directive (32 CFR part 2001) as it applies to the Commission.

§ 201.43 Mandatory declassification review.

(a) Requests for mandatory declassification review. (1) Definitions. Mandatory declassification review (“MDR”) means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of Executive Order 13526.

(2) Procedures. Requests for MDR of information in the custody of the Commission that is classified under Executive Order 13526 or predecessor orders shall be directed to the Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington DC 20436. MDR requests will be processed in accordance with Executive Order 13526, its implementing directive, and this section. An MDR request must describe the document or material containing the requested information with sufficient specificity to enable Commission personnel to locate it with a reasonable amount of effort. Requests for broad types of information, entire file series of records, or similar non-specific requests may be denied processing. The Secretary shall notify a requester who has submitted a non-specific request that no further action will be taken on the request unless the requester provides additional description.

(b) Freedom of Information Act and Privacy Act requests. (1) Requests for records submitted under the Freedom of Information Act (“FOIA”) (5 U.S.C. 552), as amended, or the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which include classified information shall be processed in accordance with the

provisions of those acts and applicable Commission regulations (subpart C of this part (FOIA regulations); subpart D of this part (Privacy Act regulations)).

(2) If a requester submits a request under FOIA and also requests MDR, the Secretary shall require the requester to select one process or the other. If the requester fails to select one or the other process, the Secretary will treat the request as a FOIA request unless the requested materials are subject only to MDR.

(c) Referral of MDR requests. (1) Because the Commission does not have original classification authority and all U.S. originated classified information in its custody has been originally classified by another Federal agency, the Secretary shall refer all requests for MDR and the pertinent records to the originating agency for review. Following consultations with the originating agency, the Secretary shall notify the requester of the referral unless such association is itself classified under Executive Order 13526 or its predecessor orders. The Secretary shall request that the originating agency, in accordance with 32 CFR 2001.33(a)(2)(ii) and 2001.34(e):

- (i) promptly process the request for declassification,
- (ii) communicate its declassification determination to the Secretary, and
- (iii) if the originating agency proposes to withhold any information from public release, notify the Secretary of the specific information at issue and the applicable law that authorizes and warrants withholding such information.

(2) Unless a prior arrangement has been made with the originating agency, the Secretary shall collect the results of that agency's review and inform the requester of any final decision regarding the declassification of the requested information as follows:

- (i) If the originating agency denies declassification of the requested information in whole or in part, the Secretary shall ensure that the decision provided to the requester includes notification of the

right to file an administrative appeal with the originating agency within 60 days of receipt of the denial and the mailing address for the appellate authority at the originating agency.

(ii) If the originating agency declassifies the requested information in whole or in part, the Secretary shall determine whether the requested declassified information is exempt from disclosure, in whole or in part, under the provisions of a statutory authority, such as the FOIA. The Secretary shall inform the requester that an appeal from a denial of requested declassified information must be received within 60 days of the date of the letter of denial and shall be made to the Commission and addressed to the Chairman, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

(d) Foreign Government Information. (1) Definitions. "Foreign government information" ("FGI") means information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence; information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or information received and treated as FGI under the terms of a predecessor of Executive Order 13526.

(2) MDR requests for classified records in Commission custody that contain FGI. The Commission will handle such MDR requests consistent with the requirements of Executive Order 13526 and 32 CFR part 2001. MDR requests for FGI initially received or classified by another Federal agency shall be referred to such agency following the referral procedures in paragraph (c) of this section.

(e) Appeals of denials of MDR requests. MDR appeals are for the denial of classified information only. Appeals of denials are handled in accordance with 32 CFR 2001.33(a)(2)(iii), which provides that the agency appellate authority deciding an administrative appeal of the denial of an MDR request shall

notify the requester in writing of the reasons for any denial and inform the requester of his or her final appeal rights to the Interagency Security Classification Appeals Panel.

By order of the Commission.

Issued: April 11, 2014

Lisa R. Barton

Acting Secretary to the Commission

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